TITLE 19 NYCRR PART 942
PROCEDURE FOR REQUESTING AN EXEMPTION FROM PUBLICLY DISCLOSING CLIENT INFORMATION PURSUANT TO QUESTIONS 8(B-1), 8(B-2) OR 8(C) ON A FINANCIAL DISCLOSURE STATEMENT

(Effective 4/12/17)

Title 19 NYCRR Part 942 is amended to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT

942.1 Preamble

The purpose of this Part is to implement the legislative direction set forth in Chapter 56 of the Laws of 2015 that the Commission on Ethics and Lobbying in Government receive and determine requests for exemption from the duty to publicly disclose client information in response to certain questions on the financial disclosure statement that must be filed in accordance with section 73-a of the Public Officers Law. Specifically, the statute carves out a limited exception to the general rule mandating disclosure of client information and permits a filer to ask either the Office of Court Administration or the Commission on Ethics and Lobbying in Government for authority not to disclose client information in responding to questions 8(b-1), (b-2) and (c) of section 73-a(3). The statute also provides that disclosure of client information is not required in certain categories of cases delineated therein. With respect to clients represented in matters not otherwise exempt, this Part provides a procedure to request an exemption from publicly disclosing such clients and related information.

942.2 Definitions.

(a) ***Commission*** shall mean the New York State Commission on Ethics and Lobbying in Government.

(b) ***Covered Person*** shall mean any individual who is required to file a Financial Disclosure Statement pursuant to section 73-a of the Public Officers Law and is required to disclose Client Information pursuant to questions 8(b-1), 8(b-2) or 8(c) of the Financial Disclosure Statement.

(c) ***Exemption*** shall mean a waiver from publicly disclosing Client Information pursuant to questions 8(b-1), 8(b-2) or 8(c) of the Financial Disclosure Statement.

(d) ***Financial Disclosure Statement*** shall mean the annual statement that must be filed pursuant to section 73-a of the Public Officers Law.

(e) ***Client Information*** shall mean the identity of a Client, customer, person or entity, and other related information required to be publicly disclosed in response to questions 8(b-1), 8(b-2) and 8(c) on the Financial Disclosure Statement.

(f) ***Client*** shall mean the specific client, customer, person or entity referenced in Section 942.2(e).

(g) ***Ministerial Matter*** shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

(h) ***Title*** shall mean the name of the position or job in which a Covered Person serves or, in the case of a Covered Person who is a candidate for statewide office or a member of the legislature, the name of the office for which the Covered Person is a candidate.

(i) ***State Agency*** shall mean any State department, or division, board, commission, or bureau of any State department, any public benefit corporation, public authority, or commission at least one of whose members is appointed by the Governor. State Agency shall also include the State University of New York or the City University of New York, including all their constituent units except (1) community colleges of the State University of New York and (2) the independent institutions operating statutory or contract colleges on behalf of the State.

942.3 Procedure.

(a) Pursuant to Executive Law § 94(9) and questions 8(b-1), 8(b-2) and 8(c) on the Financial Disclosure Statement set forth in Public Officers Law §73-a, the Commission permits a Covered Person to make a confidential request, in accordance with this Section, for an Exemption from the requirement to publicly disclose Client Information. If requesting an Exemption from the

Commission, such Covered Person shall file the Exemption request with the Commission on or before the deadline to file a Financial Disclosure Statement that applies to said Covered Person pursuant to Public Officers Law section 73-a(2). A Covered Person may not file an Exemption request with the Commission for a Client matter which the Covered Person has previously addressed in an Exemption request filed with the Office of Court Administration.

(b) The filing of an Exemption request pursuant to this Part shall not toll a deadline to file a Financial Disclosure Statement. A Financial Disclosure Statement filed during the pendency of a request for Exemption shall include all required information except the Client Information.

(c) In response to questions 8(b-1), 8(b-2) and 8(c) of the Financial Disclosure Statement, a Covered Person need not report Clients or customers with respect to matters for which the Covered Person (or his or her firm) was retained before entering public office in accordance with § 73-a(3)(8) of the Public Officers Law.

(d) The Exemption request shall be made in writing, signed by the Covered Person requesting such Exemption, and sent to the Commission via email at FDSHelpDesk@ethics.ny.gov. The Exemption request shall be deemed to be a part of his or her Financial Disclosure Statement and subject to all applicable enforcement and penalty provisions of Public Officers Law § 73-a, including without limitation subdivisions 4 and 6 of said section, and Executive Law § 94.

(e) In the request for Exemption, the Covered Person shall state that:

"My Client is not currently receiving my services or seeking my services in connection with:

(1) A proposed bill or resolution in the senate or assembly during the reporting period;

(2) A contract in an amount totaling $10,000 or more from the state or any state agency for services, materials, or property;

(3) A grant of $10,000 or more from the state or any state agency during the reporting period;

(4) A grant obtained through a legislative initiative during the reporting period; or

(5) A case, proceeding, application or other matter that is not a Ministerial Matter before a state agency during the reporting period," and

(f) The request for Exemption should include but need not be limited to the following information:

(1) the name and work address of the Covered Person;

(2) the Title of the Covered Person;

(3) a description of the specific duties and responsibilities of the Covered Person;

(4) the Client Information for which the Covered Person seeks an Exemption, and with respect to each matter on which the Covered Person has provided or will provide services to the Client, a description of the services rendered or to be rendered, the actual or estimated fee amount, and the actual or estimated duration of such services;

(5) a general description of the business activities in which the Client engages;

(6) to the best of the Covered Person's knowledge, a description of any specific business the Client has before the state;

(7) to the best of the Covered Person's knowledge, a description of any particularized interest the Client has in any pending legislation;

(8) if applicable, a description of any action taken by the Covered Person relating to the Client and any interaction the Covered Person has had with the Client in the course of performing the Covered Person's official duties;

(9) a statement explaining why the Covered Person should receive the requested Exemption rather than be required to disclose the Client Information;

(10) a description of any public disclosure of the Client Information in any other public filing or public appearance including regulatory filings and litigation papers and appearances;

(11) a description of any prior applications submitted by the Covered Person to the Commission or the Office of Court Administration for an Exemption from public disclosure of Client Information for the Client on any matter (including pending applications) and the results of such applications; and

(12) any other relevant information which may support the Exemption request.

942.4 Commission action.

(a) All requests for Exemption shall be reviewed and decided in the initial instance by the Executive Director. A denial of a request for Exemption may be appealed to the Commission for reconsideration in accordance with the provisions of Part 941.17 of this Title.

(b) Upon receipt of a request for Exemption, the Executive Director shall review the material filed to determine whether the Exemption shall be granted. If no further information is required, the Executive Director shall render decision on the material.

(c) In reviewing a request for an Exemption, the Executive Director shall conduct its inquiry and, being mindful of the need to preserve the confidentiality of Client Information prior to public disclosure, may consult with bar or other professional associations, or with the office of court administration or the legislative ethics commission in the case of individuals subject to the Commission's jurisdiction, and may consider rules of professional conduct.

(d) The factors the Executive Director shall consider in determining a request for Exemption shall include, but not be limited to:

(1) the nature and the size of the Client;

(2) whether the Client has any business before the state; and if so, how significant the business is; and whether the Client has any particularized interest in pending legislation and if so how significant the interest is;

(3) whether disclosure may reveal trade secrets;

(4) whether disclosure could reasonably result in retaliation against the Client;

(5) whether disclosure may cause undue harm to the Client;

(6) whether disclosure may result in undue harm to the attorney-client relationship;

(7) whether disclosure may result in an unnecessary invasion of privacy to the Client; and

(8) any other factors that the Executive Director deems relevant to the Exemption request.

(e) The Executive Director shall grant the Exemption request upon a finding that, under the totality of the circumstances, the interests in nondisclosure of the Client Information (including the general interests served by principles of Client confidentiality) outweigh the interests served by disclosure; otherwise the Executive Director shall deny the Exemption request.

(f) The determination of the Executive Director shall be set forth in writing and provided to the Covered Person. Any denial shall include an explanation for the determination. The Executive Director shall provide the Commission with information regarding the nature and number of Exemption applications received and disposition thereof.

(g) If the Covered Person receives an exemption, no Client Information that was part of the request, nor the fact that an exemption has been sought and granted, need be included on the Financial Disclosure Statement.

(h) If the Executive Director or Office of Court Administration denies the request for Exemption, or if the Commission denies an appeal of a denial of the Executive Director pursuant to Part 941.17 of this Title, and the Covered Person agrees to represent the Client, such Covered Person must include the Client Information in his or her Financial Disclosure Statement when it is due, or, if his or her Financial Disclosure Statement was filed during the pendency of a request for Exemption, such Covered Person must file with the Commission an amended Financial Disclosure Statement that includes the Client Information within 15 days from receipt of the denial.

(i) Where the Executive Director or Office of Court Administration denies a request for Exemption, or if the Commission denies an appeal of a denial of the Executive Director pursuant to Part 941.17 of this Title, and thereafter there occurs a material change of facts or circumstances, including a change in the Covered Person's Title or duties, a change in the nature of the services provided to the Client, or a change in the nature of the Client's business, a Covered Person may seek reconsideration of that denial following the procedures set forth in section 942.3.

(j) An Exemption, once granted, shall remain in effect in each subsequent year in which such disclosure would otherwise be required unless and until:

(1) the Covered Person is appointed or promoted to a new Title in which such a filing is required; or

(2) there is a material change in the duties of the Covered Person; or

(3) there is a material change in the nature of the Client's business before the State, if applicable.

(k) If the Executive Director receives new facts or other information relevant to the Exemption, he may reconsider a prior determination to grant such Exemption.